



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD13/2024

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION and another/others
named in the schedule
Plaintiff

**BRITE ADVISORS PTY LTD ACN 135 024 412 (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)**
Defendant

ORDER

JUDGE: JUSTICE O'SULLIVAN

DATE OF ORDER: 05 June 2024

WHERE MADE: Adelaide

For the purposes of this Order:

“applicant” means Linda Smith and Rob Kirman (as Court appointed Receivers & Managers and Liquidators of Brite Advisors Pty Ltd ACN 135 024 412)

“Brite Advisors” means the defendant in this matter, Brite Advisors Pty Ltd (Receivers and Managers Appointed) (In Liquidation)

“IBAU Accounts” means the following IBAU accounts held by Interactive Brokers Australia Pty Ltd in the name of Brite Advisors and containing Property to which the applicant has been appointed as Receivers and Managers:

- (a) I5876295;
- (b) UL3311311;
- (c) UL3311312;
- (d) I6075976;
- (e) UL6060948;
- (f) US6060949;
- (g) I3214939;
- (h) U3214940;
- (i) U11423761;
- (j) I12469256;
- (k) UL9224189; and



(l) US9224190.

“Margin Loan” means the lending facility provided by Interactive Brokers Australia Pty Ltd to Brite Advisors.

“Brite Assets” means all cash or securities held by Interactive Brokers Australia Pty Ltd for or on behalf of Brite Advisors.

THE COURT ORDERS THAT:

1. Interactive Brokers Australia Pty Ltd is joined as a respondent to these proceedings for the limited purpose of these orders, and any matters or circumstances arising from the matters contemplated therein.
2. Subject to order 3 below, the respondent is to immediately and by no later than 7 business days after the making of these orders:
 - a. transfer all Brite Assets, held in the IBAU Accounts (save for those the subject of the applicant's agreement given in accordance with order 3.a below) to account U3214940;
 - b. deliver up to the applicant viewing access to all IBAU Accounts to enable full visibility of the Brite Assets held in those accounts;
 - c. comply with the applicant's direction to provide Mr Ted Alexander of BML Funds Management Pty Ltd with trading access to account U3214940 as the applicant's agent to undertake trading on IBAU's platform in accordance with the orders made in these proceedings on 6 March 2024; and
 - d. provide to the applicants a full accounting of all transactions by which Brite Advisors' liability to the respondent relating to the Margin Loan was reduced, including by way of set-off of cash holdings, dividend income and interest income, from the period 1 October 2023 to the date on which the respondent complies with order 2.b above.
3. On and from the making of these orders, the applicant:
 - a. agrees that the respondent is to retain cash in master accounts I5876295, I6075976 and I1246925 (and the sub-accounts associated with them) equal to the short cash balances in those accounts and in the currency of those accounts (where possible) or otherwise in another currency as at the date of this order plus an amount to cover projected interest charges and foreign exchange changes for the 24 months following the date of this order;
 - b. undertakes to the Court and to the respondent to maintain, and to instruct Mr Alexander to maintain, in account U3214940 securities with a value equivalent to not less than USD\$20million from the date of this order until such further order of the court;
 - c. undertakes to the Court and to the respondent to provide prior written notice of any application to amend or lift the undertaking referred to in order 3.b above to the respondent;
 - d. undertakes to the Court and to the respondent that the respondent's compliance with these orders, and the trading to be undertaken by the defendant or its agent as contemplated in these orders, and the respondent's acceptance of the



undertakings given by the applicant in these orders, does not:

- i. in any way prejudice any or all of the respondent's rights with respect to the Margin Loan or otherwise relating to or arising out of or in connection with its relationship with Brite Advisors, including without limitation any security interest or set-off rights it has over any assets affected by these orders; or
- ii. amount to a concession or agreement by the respondent that it is not entitled to interest and dividend amounts earned on the Brite Assets whilst any short cash balance remains on any of the IBAU Accounts, nor does it constitute any waiver of any such entitlement,

and that the applicant will not make any argument to the contrary.

4. Order 6 of the orders made in WAD262/2023 on 13 December 2023 shall not prevent the respondent from complying with order 2.a of these orders.
5. The orders made in WAD262/2023 on 13 December 2023 be varied by adding order 7A, which reads as follows:

“The exception stated in Order 7(c) above shall not apply to Interactive Brokers Australia Pty Ltd, who as from 14 June 2024, until such further order of the Court, will not be permitted to exercise any right of set-off which it may have in respect of a credit facility afforded by it to the Defendant against any Brite Assets held in Interactive Brokers Australia Pty Ltd account number U3214940.”

6. The Court notes that nothing in order 5 hereof in any way prejudices the right of the Receivers and Managers of the defendant to raise any or all arguments with respect to any right of set-off which Interactive Brokers Australia Pty Ltd may assert in respect of any credit facility afforded by it to the defendant.
7. On and from the making of these orders, within 15 business days of the end of each calendar month, the respondent will provide to the applicant a monthly report accounting for all interest earned on the long cash balances held in the IBAU Accounts and all interest accrued on the short cash balances held in the IBAU Accounts during that calendar month and on a gross basis (before any netting).
8. Linda Smith and Robert Kirman of McGrathNicol (**Receivers and Managers**) would be acting properly and are justified, for the purposes of exercising their powers under Order 8 of the orders made on 6 February 2024 in this matter, in taking the following steps:
 - a. communicating directly with any person who has or may have an entitlement to assets and undertakings held by the Defendant on trust for another, including persons who have a beneficial entitlement through an intermediary (**Beneficiaries**) for the purpose of sharing with the Beneficiaries, through Salesforce (or any other equivalent means) the value of their investments held by the Defendant as at 13 December 2023 as calculated by the Receivers and Managers based on the Raw Data (as defined in the Ninth Affidavit of Linda Methven Smith affirmed on 31 May 2024 and filed in these proceedings) (**Investment Verification Information**), and any other correspondence relating to the Investment Verification Information; and
 - b. adopting 13 December 2023, being the date of appointment of the Receivers



and Managers, as the relevant date at which to determine Beneficiaries' entitlements.

Date that entry is stamped: 6 June 2024

Sia Lagos
Registrar



Schedule

No: WAD13/2024

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Interested Person	LINDA METHVEN SMITH AND ROBERT KIRMAN IN THEIR CAPACITY AS RECEIVERS AND MANAGERS OF BRITE ADVISORS ACN 135 024 412 (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Person	ADRIAN CHARLES HYDE AND JOANNE SANDRA WILD IN THEIR CAPACITIES AS JOINT ADMINISTRATORS OF RELAY ADMINISTRATION LIMITED, CORINTHIAN PENSION TRUSTEES LIMITED AND PANTHEON TRUSTEES LIMITED (ALL IN ADMINISTRATION)